Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1995

GERALD BROUSSARD WETTA,

Petitioner,

vs.

STATE OF GEORGIA,

Respondent.

Petition for Writ of Certiorari to the Georgia State Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Was the trial court's charge to the jury on the issue of self defense impermissibly burden-shifting by directing the jury, ". . . the defendant must show . . ." that his fear was reasonable.

2. Did the trial court deny Wetta's due process rights and compulsory process by its refusal to allow the defense to prove a similar transaction by the prosecuting witness?

PARTIES TO THE PROCEEDINGS

Gerald Broussard Wetta is the Petitioner. The State of Georgia is the Respondent. Wetta was Defendant in the trial court and Appellant in the Georgia Court of Appeals. The State of Georgia was Appellee below.

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at *Wetta v. State*, __ Ga. App. ___, 456 S.E. 2d 696 (1995).

STATEMENT OF JURISDICTION

(i) The Georgia Court of Appeals ruled on March 17, 1995.

(ii) A timely Petition for a Writ of Certiorari to the Supreme Court of Georgia was denied on July 14, 1995.

(iii) A Motion for Rehearing from the denial of Certiorari was denied on July 28 1995.

(iv) This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the United States Constitution:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Fourteenth Amendment to the United States Constitution:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Gerald Broussard (Bruce) Wetta was arrested by Atlanta Police after a dispute with his girlfriend. Wetta was charged with the misdemeanor offenses of Simple Battery, Battery, and Criminal Trespass.

Wetta plead not guilty and had a jury trial. The jury acquitted Wetta of Battery and Criminal Trespass. He was convicted of Simple Battery. He was sentenced to sixty days imprisonment, plus probation. Service of his sentence has been stayed pending his appeal and petitions.

Wetta's defense at trial was that he was the victim of an attack by his girlfriend and that he touched her only in self-defense. Wetta showed at trial that after his arrest, he filed a civil lawsuit seeking a restraining order against her. His girlfriend counterclaimed asking for hundreds of thousands of dollars as her damages.

During the trial, Wetta sought to introduce the testimony of Mr. Greene, a former employer of the girlfriend. Mr. Greene and his wife were prepared to testify that the girlfriend had an affair with Greene and then blackmailed him. When she continued to blackmail him after he had made one payment, Greene told his wife in order to put an end to the blackmail.

Both Mr. and Mrs. Greene travelled to Atlanta and testified during an oral proffer. The trial court heard the proffer, but refused to let the jury hear the testimony.

This was raised as error at trial, on a motion for new trial, and on appeal. The Georgia Court of Appeals found no error; ruling that the extortion was not a similar transaction and, therefore, not admissible.

At the end of the trial, the court charged the jury on the issue of self-defense as follows:

> The State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. To *establish a plea of self-*

> *defense, the defendants must show,* if circumstances were such as to excite fears of a reasonable person, *that his safety is in danger. A mere unreasonable apprehension of suspicion of harm is insufficient.*

(T-711), emphasis added.

The jury, after deliberating, sent out a note which read "ruling on being provoked and reacting in self-defense" (T-718). The Court then recharged:

> The State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. *To establish a plea of self-defense,* the defendant *will show* that circumstance were such as to excite fears of a reasonable person that *his safety is in danger. A mere, unreasonable apprehension of suspicion of harm is insufficient.*

(T-720) emphasis added.

The additional, emphasized portions of the charge and recharge were not requested by Wetta, and are *not* included in the Suggested Pattern Jury Instructions.

The Georgia Court of Appeals held, "Taken as a whole, the charge in this case could not be considered burden-shifting.".

A. Constitutional Issues in the Lower Courts

The questions presented were raised by the brief in the Court of Appeals of Georgia and in the certiorari petition to the Georgia Supreme Court. The Court of Appeals resolved these questions

without reference to the Constitution of the United States. The Georgia Supreme Court denied review. Both Federal and State Constitutional provisions were specifically asserted by petitioner in the courts below.

REASONS FOR GRANTING THE WRIT

This petition presents two issues which are both timely and important. First, the burden shifting jury charge flies squarely in the face of the trend in this court to reject jury instructions which tend to mislead the jury about the burden of proof (in terms of the quantum of proof) and the allocation of the burden (who has it). This instruction, if read in plain English terms, tells the jury that it is the defendant who must show (*i.e.*, prove) to the jury that his fears were those of a reasonable person and that his response was reasonable.

Second, Wetta was deprived of his right to present a defense when his similar transaction evidence was excluded.

A. The Jury Instruction

The importance which the jury placed on this issue is highlighted by the fact that they came back and asked for an instruction on this very important point and none other.

In *Estelle v. McGuire*, 502 U.S. __, 112 S. Ct. 475 (1991), this Court made clear that the proper inquiry is not whether an improper instruction "could have been" applied in an unconstitutional manner, but rather, whether there was a reasonable likelihood that the jury did apply it in an unreasonable manner.

In his concurring and dissenting opinion in *Victor v. Nebraska*, __ U.S. __, 114 S. Ct. 1239, 1254, Justice Blackmun described *Estelle's* holding in this fashion:

> It is not sufficient for the jury instruction merely to be susceptible to an interpretation that is technically correct. The important question is whether there is a "reasonable likelihood" that the jury was misled or confused by the instruction, and therefore, applied it in a way that violated the Constitution.

114 S. Ct. at 1254.

The requirement that reasonable doubt not be misdefined arises from the constitutional necessity that a conviction not be had on any lesser standard.

The instruction here relates not to the reasonable doubt standard but to how the burden of proof will be allocated. This case presents the situation left open by *Martin v. Ohio*, 480 U.S. 228, 107 S. Ct. 1098 (1987). In *Martin*, the jury was instructed that it was the defendant's burden to prove self-defense and this court found that burden, under the facts of that case, did not deny due process. In this case, however, the instruction specifically calls for the defendant to bring forth evidence to rebut the prosecution's case. That instruction clearly does violate *In Re Winship*, 397 U.S. 358, 90 S. Ct. 1068 (1970), by relieving the State of its obligation to prove all of the elements of the offense.

The problem is highlighted in this case by the jury's specific request for a reinstruction. Also, this instruction does not tell the jury what the standard of proof is that must be applied to the Defendant's affirmative defense. The only standard of proof that the jury received instruction on was the charge that the State must prove its case beyond a reasonable doubt. The jury had to guess whether Wetta had to prove self-defense "beyond a reasonable doubt," by a "preponderance of the evidence," or by some other

standard. This lack of a clear instruction violated Wetta's right to the due process of law as guaranteed by the fifth and fourteenth amendments.

B. The Similar Transaction

The other question presented is whether the Court of Appeals applied an unconstitutional standard in its exclusion of Wetta's proffered evidence of a similar transaction by the prosecuting witness. The Court of Appeals' ruling narrowly construing what testimony can be admitted as a similar transaction denies Wetta's fifth and fourteenth amendment due process rights and his sixth amendment right of compulsory process.

In *Taylor v. Illinois*, 484 U.S. 400, 108 S. Ct. 646 (1988), this court held that the Compulsory Process Clause includes not only the right to subpoena witnesses, but also the right to present them. In *Taylor*, the issue was the defense attorney's failure to comply with a state discovery statute.

The consistent theme of this court's decisions has been in favor of allowing the defense to present its case. In *Washington v. Texas*, 388 U.S. 14, 87 S. Ct. 1920 (1967), it was held that a state statute making co-defendants incompetent *per se* was unconstitutional. Even the use of hypnotically refreshed testimony has yielded to the defendant's overriding right to testify and to present a defense. *Rock v. Arkansas*, 483 U.S. 44, 107 S. Ct. 2704 (1987).

The Georgia Court of Appeals dodged the issue by citing the legal axiom that "specific acts of bad character are inadmissible." Here the evidence was not a specific act of prior misconduct, it was a similar transaction.

Wetta sought to show that his girlfriend had blackmailed a

previous lover and that these allegations were part of her plan to blackmail him. Here the blackmail was in the form of her civil suit for damages. The jury should have been allowed to make its own assessment of how much weight to give this evidence.

CONCLUSION

Petitioner urges this Court to grant the writ and to address the issues raised in his petition.

Respectfully submitted,

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APPENDIX A — ORDERS OF THE SUPREME COURT OF GEORGIA DATED JULY 28, 1995

SUPREME COURT OF GEORGIA

Case No. S95C1257

Atlanta July 28, 1995

The Honorable Supreme Court met pursuant to adjournment. The following order was passed.

GERALD BROUSSARD WETTA v. THE STATE

Upon consideration of the Motion to Stay Remittitur filed in this case, it is ordered that it be hereby denied.

All the Justices concur, except Hines, J., not participating.

[SEAL]

SUPREME COURT OF THE STATE OF GEORGIA,

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

s/ Lynn M. Stinchcomb, Chief Deputy Clerk

Appendix A

SUPREME COURT OF GEORGIA

Case No. S95C1257

Atlanta July 28, 1995

The Honorable Supreme Court met pursuant to adjournment. The following order was passed.

GERALD BROUSSARD WETTA v. THE STATE

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur, except Hines, J., not participating.

SUPREME COURT OF THE STATE OF GEORGIA,

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

s/ Sherie M. Welch, Clerk

APPENDIX B — ORDER OF THE SUPREME COURT OF THE STATE OF GEORGIA DATED JULY 14, 1995

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

DATE: July 14, 1995

Bruce Maloy
MALOY & JENKINS
Suite 3410
1201 West Peachtree Street
Atlanta GA 30309

Case No. S95C1257

GERALD BROUSSARD WETTA V. THE STATE

COURT OF APPEALS CASE NO. A94A2755

The Supreme Court today denied the petition for certiorari in this case.

Benham, C.J., Fletcher, P.J., Sears, Hunstein, Carley and Thompson, JJ., concur.

Sincerely,

Sherie M. Welch, Clerk

APPENDIX C — ORDER OF THE COURT OF APPEALS OF THE STATE OF GEORGIA DATED MARCH 30, 1995

Court of Appeals

of the State of Georgia

ATLANTA, MAR 30 1995

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A94A2755. WETTA v. THE STATE.

Upon consideration of the Motion for Reconsideration filed on behalf of appellant in the above-styled case, it is hereby ordered that the Motion for Reconsideration is hereby denied. Any error with respect to the rescheduling of oral argument is deemed harmless error. It is further ordered that the new opinion be substituted for the original opinion dated March 17, 1995.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 30 1995

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk,

s/ William L. Martin

APPENDIX D — OPINION OF THE COURT OF APPEALS OF THE STATE OF GEORGIA DATED MARCH 17, 1995

SECOND DIVISION
BIRDSONG, P. J.,
BLACKBURN AND RUFFIN, JJ.

NOTICE: *MOTIONS FOR RECONSIDERATION MUST BE RECEIVED IN OUR CLERK'S OFFICE WITHIN TEN DAYS OF THE DATE OF DECISION* to be deemed timely filed. (Court of Appeals Rules 4 and 37, January 1, 1995)

March 17, 1995

In the Court of Appeals of Georgia

A94A2755. WETTA v. THE STATE. Ru-124C

RUFFIN, Judge.

Gerald Broussard Wetta was convicted by a jury of simple battery and acquitted on charges of criminal and battery. This appeal follows the denial of Wetta's motion for new trial.

Viewed in the light to support the jury's verdict, the evidence showed that Wetta and the victim were together at the victim's apartment for dinner when they got into an argument. The victim testified that after Wetta threw bottles of beer onto the floor and verbally abused her, she asked him to leave. When he refused, she called the "911" operator for assistance. During the victim's conversation with the dispatcher, Wetta agreed to go. However, after the victim hung up, Wetta began hitting and kicking her. He pinned her to the bed and thereafter unbuttoned and unzipped her

jeans. As the victim managed to push Wetta away, the 911 emergency dispatcher telephoned the victim's apartment and Wetta answered. The jury heard the 911 recording of the victim's screams for help in the background. The victim testified that Wetta hung up the telephone and quickly left the apartment with a basket of his laundry. As Wetta was leaving, Officer Lewis of the Atlanta Police Department arrived to investigate the victim's 911 call. He testified that the victim's clothes were in disarray, her upper lip was red and swollen, and she was crying hysterically. The victim told Officer Lewis that Wetta had hit her in the face and rib cage with a closed fist. Officer Lewis observed that the victim's apartment was also in disarray: a cordless telephone was in pieces on the kitchen floor, a planter was broken, and some living room furniture was stained with what appeared to be wine. In addition, Mary Galphin testified that after Wetta and Officer Lewis left the victim's apartment, the victim called her. The victim was reportedly hysterical and told Galphin that Wetta had beaten her. The State also presented Wetta's former girlfriend who testified concerning similar arguments, violence, and abusive behavior during her relationship with Wetta.

1. Wetta contends the trial court's charge to the jury on self-defense impermissibly shifted the burden of proof. We disagree.

Our review of the court's charge reveals a thorough initial instruction on the State's burden to prove every element of the charged offenses. Following its charge on the elements of the offense of battery, the court charged, "If you find the defendant's conduct was justified, this is a defense to the prosecution for committing any crime based on that conduct. A person is justified in threatening or using force against another when and to the extent that he reasonably believes that such threat or force is necessary to defend himself or a third person against the other's imminent use of unlawful force. The State has the burden of

proving beyond a reasonable doubt that the defendant did not act in self-defense. To establish a plea of self-defense, the defendant must show, if circumstances were such as to excite fears of a reasonable person, that his safety is in danger. A mere apprehension of suspicion of harm is insufficient." The court later recharged the jury as to the elements of the offenses charged, and the defense of justification.

The charge "expressly placed the burden of proof on the State as to self-defense. Nevertheless, even assuming arguendo that a reasonable juror could potentially have interpreted some portion of the subject language as unconstitutionally burden-shifting, we find no prejudice to [Wetta's] substantial rights," given the court's thorough charge on the burden of proof in a criminal case. (Citations and punctuation omitted.) *McWhorter v. State,* 198 Ga. App. 493, 494 (3) (402 SE2d 60) (1991). Taken as a whole, the charge in this case could not be considered burden-shifting. See *Griffith v. State,* 169 Ga. App. 957 (315 SE2d 490) (1984).

2. Wetta enumerates as error the admission of similar transaction evidence by a former girlfriend.

At the similar transaction hearing prior to trial, the former girlfriend testified that five years before the incident in this case, she ended a four-year relationship with Wetta. In addition, Wetta underwent direct and cross examination. After the examination and argument of counsel, the trial court found the State had met its burden of showing sufficient similarities between Wetta's prior violent conduct and the charged offenses and ruled the evidence admissible to show Wetta's bent of mind and course of conduct. Prior to the former girlfriend's testimony at trial, the court fully instructed the jury to consider the evidence only for the limited purpose of establishing Wetta's bent of mind and

course of conduct. We find no error in the court's determination that the State met its three-fold burden under *Williams v. State*, 261 Ga. 640, (2)(b) (409 SE2d 649) (1991).

Wetta also argues in his brief that the former girlfriend's testimony that Wetta objected to her having Black or Jewish friends impermissibly placed his character into evidence. He also argues that the former girlfriend's mention of an unrelated incident of domestic violence inflamed the jury. We need not consider these claims because " 'enumerations may not be enlarged by brief on appeal to cover issues not contained in the original enumeration.' [Cit.]" *Williams v. State*, 213 Ga. App. 70, 71 4) (443 SE2d 696) (1994). In any event, these contentions are without merit. The trial court sustained Wetta's objections to the former girlfriend's testimony as irrelevant and Wetta neither asked for curative instructions nor moved for a mistrial. Having failed to ask the court to take additional corrective measures, Wetta cannot now claim the testimony was prejudicial to him. See *Woods v. State*, 212 Ga. App. 544 (1) (442 SE2d 22) (1994).

3. Wetta next contends that the court's exclusion of impeachment evidence concerning the victim's prior behavior was error because Wetta was not allowed to show the victim's motive to lie.

In a voir dire examination outside the presence of the jury, the trial court heard the testimony of Graham Greene who stated that he had an affair with the victim nine years before the incident in this case. He further stated that he gave the victim $10,000 because she threatened to tell his wife about their affair. However, he also testified that the victim subsequently repaid him $4,000 not long after she came to Atlanta. Greene's wife testified on voir dire that she called the victim and informed her that she knew of the affair.

Appendix D

Wetta's reliance on the Supreme Court's decision in *Chandler v. State*, 261 Ga. 402 (405 SE2d 669) (1991), holding that "specific acts of violence by a victim against third persons shall be admissible where the defendant claims justification", id. at 407, is misplaced. Greene's testimony did not support Wetta's defense of justification. Instead, Wetta sought to attack the victim's credibility with evidence that she had an affair with a married man and then threatened to tell his wife unless he gave or loaned her money. "Although OCGA § 24-9-84 provides that a witness may be impeached by a showing of general bad character, specific acts of bad character are inadmissible. [Cit.] The proffered testimony of [the Greenes] related solely to specific bad acts and not to the general bad character of the victim. Therefore, the testimony was not admissible." *Heaton v. State*, 214 Ga. App. 460, 461 (2) (448 SE2d 49) (1994).

4. Finally, Wetta challenges on hearsay grounds the admission of Mary Galphin's testimony concerning what the victim told her shortly after the incident. The court correctly admitted Mary Galphin's statements as part of the res gestae. *Williams v. State*, 202 Ga. App. 82, 84 (413 SE2d 256) (1991); see also *Tucker v. State*, 243 Ga. 683 (3) (256 SE2d 365) (1979) (outcry made by a rape victim to one she immediately sought out within one hour from the commission of the crime was sufficiently contemporaneous to be a part of the res gestae and was therefore admissible). Moreover, the victim testified as to what she told Galphin, and any error in admitting the testimony was therefore harmless.

Judgment affirmed. Birdsong, P. J., and Blackburn, J., concur.

APPENDIX E — AMENDED OPINION OF THE COURT OF APPEALS OF THE STATE OF GEORGIA DATED MARCH 17, 1995

SECOND DIVISION
BIRDSONG, P. J.,
BLACKBURN AND RUFFIN, JJ.

NOTICE: *MOTIONS FOR RECONSIDERATION MUST BE RECEIVED IN OUR CLERK'S OFFICE WITHIN TEN DAYS OF THE DATE OF DECISION* to be deemed timely filed. (Court of Appeals Rules 4 and 37, January 1, 1995)

March 17, 1995

In the Court of Appeals of Georgia

A94A2755. WETTA v. THE STATE. Ru-124C

RUFFIN, Judge.

Gerald Broussard ("Bruce") Wetta was convicted by a jury of simple battery and acquitted on charges of criminal and battery. The victim was his girlfriend, Ester Lee. This appeal follows the denial of Wetta's motion for new trial.

Viewed in the light to support the jury's verdict, the evidence showed that Wetta and Lee were together at Lee's apartment for dinner when they got into an argument. Lee testified that after Wetta threw bottles of beer onto the floor and verbally abused her, she asked him to leave. When he refused, she called the "911" operator for assistance. During Lee's conversation with the dispatcher, Wetta agreed to go. However, after Lee hung up, Wetta began hitting and kicking her. He pinned her to the bed and

thereafter unbuttoned and unzipped her jeans. As Lee managed to push Wetta away, the 911 emergency dispatcher telephoned Lee's apartment and Wetta answered. The jury heard the 911 recording of Lee's screams for help in the background. Lee testified that Wetta hung up the telephone and quickly left the apartment with a basket of his laundry. As Wetta was leaving, Officer Lewis of the Atlanta Police Department arrived to investigate Lee's 911 call. He testified that Lee's clothes were in disarray, her upper lip was red and swollen, and she was crying hysterically. Lee told Officer Lewis that Wetta had hit her in the face and rib cage with a closed fist. Officer Lewis observed that Lee's apartment was also in disarray: a cordless telephone was in pieces on the kitchen floor, a planter was broken, and some living room furniture was stained with what appeared to be wine. In addition, Mary Galphin testified that after Wetta and Officer Lewis left the Lee's apartment, Lee called her. She was reportedly hysterical and told Galphin that Wetta had beaten her. The State also presented Wetta's former girlfriend who testified concerning similar arguments, violence, and abusive behavior during her relationship with Wetta.

1. Wetta contends the trial court's charge to the jury on self-defense impermissibly shifted the burden of proof. We disagree.

Our review of the court's charge reveals a thorough initial instruction on the State's burden to prove every element of the charged offenses. Following its charge on the elements of the offense of battery, the court charged, "If you find the defendant's conduct was justified, this is a defense to the prosecution for committing any crime based on that conduct. A person is justified in threatening or using force against another when and to the extent that he reasonably believes that such threat or force is necessary to defend himself or a third person against the other's imminent use of unlawful force. The State has the burden of

proving beyond a reasonable doubt that the defendant did not act in self-defense. To establish a plea of self-defense, the defendant must show, if circumstances were such as to excite fears of a reasonable person, that his safety is in danger. A mere apprehension of suspicion of harm is insufficient." The court later recharged the jury as to the elements of the offenses charged, and the defense of justification.

The charge "expressly placed the burden of proof on the State as to self-defense. Nevertheless, even assuming arguendo that a reasonable juror could potentially have interpreted some portion of the subject language as unconstitutionally burden-shifting, we find no prejudice to [Wetta's] substantial rights," given the court's thorough charge on the burden of proof in a criminal case. (Citations and punctuation omitted.) *McWhorter v. State,* 198 Ga. App. 493, 494 (3) (402 SE2d 60) (1991). Taken as a whole, the charge in this case could not be considered burden-shifting. See *Griffith v. State,* 169 Ga. App. 957 (315 SE2d 490) (1984).

2. Wetta enumerates as error the admission of similar transaction evidence by Lisa Cannon Taylor.

At the similar transaction hearing prior to trial, Taylor testified that five years before the incident in this case, she ended a four-year relationship with Wetta. In addition, Wetta underwent direct and cross examination. After the examination and argument of counsel, the trial court found the State had met its burden of showing sufficient similarities between Wetta's prior violent conduct and the charged offenses and ruled the evidence admissible to show Wetta's bent of mind and course of conduct. Prior to the Taylor's testimony at trial, the court fully instructed the jury to consider the evidence only for the limited purpose of establishing Wetta's bent of mind and course of conduct. We find

no error in the court's determination that the State met its threefold burden under *Williams v. State*, 261 Ga. 640, (2)(b) (409 SE2d 649) (1991).

Wetta also argues in his brief that the Taylor's testimony that Wetta objected to her having Black or Jewish friends impermissibly placed his character into evidence. He also argues that Taylor's mention of an unrelated incident of domestic violence inflamed the jury. We need not consider these claims because " 'enumerations may not be enlarged by brief on appeal to cover issues not contained in the original enumeration.' [Cit.]" *Williams v. State*, 213 Ga. App. 70, 71 (4) (443 SE2d 696) (1994). In any event, these contentions are without merit. The trial court sustained Wetta's objections to the Taylor's testimony as irrelevant and Wetta neither asked for curative instructions nor moved for a mistrial. Having failed to ask the court to take additional corrective measures, Wetta cannot now claim the testimony was prejudicial to him. See *Woods v. State*, 212 Ga. App. 544 (1) (442 SE2d 22) (1994).

3. Wetta next contends that the court's exclusion of impeachment evidence concerning the victim's prior behavior was error because Wetta was not allowed to show the victim's motive to lie.

In a voir dire examination outside the presence of the jury, the trial court heard the testimony of Graham Greene who stated that he had an affair with Lee nine years before the incident in this case. He further stated that he gave Lee $10,000 because she threatened to tell his wife about their affair. However, he also testified that Lee subsequently repaid him $4,000 not long after she came to Atlanta. Greene's wife testified on voir dire that she called Lee and informed her that she knew of the affair.

Appendix E

Wetta's reliance on the Supreme Court's decision in *Chandler v. State*, 261 Ga. 402 (405 SE2d 669) (1991), holding that "specific acts of violence by a victim against third persons shall be admissible where the defendant claims justification", id. at 407, is misplaced. Greene's testimony did not support Wetta's defense of justification. Instead, Wetta sought to attack Lee's credibility with evidence that she had an affair with a married man and then threatened to tell his wife unless he gave or loaned her money. "Although OCGA § 24-9-84 provides that a witness may be impeached by a showing of general bad character, specific acts of bad character are inadmissible. [Cit.] The proffered testimony of [the Greenes] related solely to specific bad acts and not to the general bad character of the victim. Therefore, the testimony was not admissible." *Heaton v. State*, 214 Ga. App. 460, 461 (2) (448 SE2d 49) (1994).

4. Finally, Wetta challenges on hearsay grounds the admission of Mary Galphin's testimony concerning what Lee told her shortly after the incident. The court correctly admitted Mary Galphin's statements as part of the res gestae. *Williams v. State*, 202 Ga. App. 82, 84 (413 SE2d 256) (1991); see also *Tucker v. State*, 243 Ga. 683 (3) (256 SE2d 365) (1979) (outcry made by a rape victim to one she immediately sought out within one hour from the commission of the crime was sufficiently contemporaneous to be a part of the res gestae and was therefore admissible). Moreover, Lee herself testified as to what she told Galphin, and any error in admitting the testimony was therefore harmless.

Judgment affirmed. Birdsong, P. J., and Blackburn, J., concur.